

**UNHCR**

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR

United Nations High Commissioner for Refugees
Regional Representation in Washington

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12 August 2009

Dear Madam, dear Sir,

Docket # CDC-2008-0001**Medical Examination of Aliens – Removal of Human Immunodeficiency Virus (HIV)
Infection from Definition Communicable Disease of Public Health Significance**

The Office of the United Nations High Commissioner for Refugees (UNHCR) appreciates the opportunity to comment on the Department of Health and Human Services (HHS) proposed rule to remove Human Immunodeficiency Virus (HIV) infection from the list of “communicable diseases of public health significance” and to remove the mandatory HIV testing requirement for foreign nationals seeking admission to the United States.

UNHCR has been charged by the United Nations General Assembly with responsibility for providing international protection to refugees and other persons within its mandate and for seeking durable solutions to their problems. The supervisory responsibility of UNHCR is additionally recognized in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. The United States is a State Party to the 1967 Protocol. Both conventions provide that the State Parties undertake to co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of these conventions.

Since 1990, UNHCR has consistently expressed its view opposing the inclusion of HIV on the list of communicable diseases of public health significance whereby refugees can be found inadmissible to the United States. UNHCR has previously commented that refugees should not be denied admission to the United States solely on the basis of their HIV status.

Division of Global Migration and Quarantine
Centers for Disease Control and Prevention
U.S. Department of Health and Human Services
Attn: Part 34 NPRM Comments
1600 Clifton Road, NE, MS E-03
Atlanta, GA 30333

Furthermore, UNHCR has written previously in opposition to mandatory medical testing of refugees for HIV infection. We believe that public health interests can be best addressed by actively promoting with refugees voluntary counselling and testing or provider initiated counselling and testing, in an environment where confidentiality and privacy can be assured. It is equally necessary that all refugees receive appropriate post-test counselling as well as medical care and assistance including provision of antiretroviral therapy when appropriate. Full and effective legal protection also must be in place for those refugees who are found to test positive for the HIV infection.

The exclusion of refugees with HIV and mandatory testing for HIV are contrary to international principles of refugee protection and have negative consequences on the ability for refugees to find durable solutions. UNHCR's positions that refugees with HIV should not be the subject of a medical inadmissibility or subject to mandatory testing are also informed by the conclusions of international medical experts, the World Health Organization (WHO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS). They have consistently held that there is no public health rationale for a State to restrict entry of persons on the grounds of HIV status.

As many refugees may rely on other immigration procedures after arrival to achieve family reunification, UNHCR also is supportive of the HIV inadmissibility being removed for all categories of foreign nationals entering the United States. Such an approach would be consistent with UNAIDS and other international guidelines that persons with HIV should not be treated in a discriminatory manner in regard to travel regulations, entry requirements, immigration procedures as well as asylum procedures.

UNHCR fully supports the adoption of the change now being proposed by HHS which will remove HIV infection from the list of communicable diseases of public health significance and will eliminate the specific testing requirements for HIV infection as part of the medical examinations required for immigration purposes. UNHCR sees the revision to these rules and regulations as a positive development for refugee protection and for the rights of those affected by HIV, and commends the United States for taking this important step forward.

Yours sincerely,